



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF THE
CHIEF FINANCIAL OFFICER

Cindy L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th Street S.W.
Washington, D.C. 20227

Dear Ms. Johnson:

Thank you for providing the Environmental Protection Agency (EPA) with the opportunity to comment on the September 16, 1997, Notice of Proposed Rulemaking (NPRM, 31 CFR Part 208), on the Electronic Funds Transfer (EFT) requirements of the Debt Collection Improvement Act of 1996 (DCIA). We believe that the NPRM overall effectively articulates the U.S. Department of the Treasury's approach on implementing the EFT requirements of the DCIA. Comments from the EPA community on various provisions of the NPRM are enclosed.

Should you or your staff have questions concerning our comments, please contact Pamela Doucourè of my staff. She can be reached at (202) 564-4939.

Sincerely,

William Cooke, Acting Director
Financial Management Division

Enclosure

cc: Jack Shipley (2731)
Ron Bachand (2734R)
Sheila Ames (3802R)
Tom McEntegart (3802R)
FMD Branch Chiefs

EFT
#117

**EPA COMMENTS ON NPRM, 31 CFR PART 208
EFT REQUIREMENT OF THE DCIA**

GENERAL COMMENTS

1. We are concerned about the lack of enforcement authority the NPRM provides to ensure that payment recipients provide their EFT banking information to Federal Agencies to effect payments via EFT. We suggest that the NPRM be revised to provide explicit guidance on what actions an Agency may take if a payment recipient refuses to provide EFT information.

2. YEAR 2000 (Y2K).

The NPRM is silent about the Year 2000 (Y2K) problem. The Y2K problem is endemic and could affect not only the Federal agencies making payments, but also the financial institutions designated by Federal payment recipients. The preamble to the final rule should acknowledge the existence of the Y2K problem and summarize what is known about its potential impact on the January 2, 1999 deployment of the final Federal EFT regime. The final preamble also should state that in the event Y2K problems turns out to be widespread and of prolonged duration, the Treasury Secretary will suspend, as appropriate, the agencies' Section 208.7 responsibilities, and will make prompt use of the general waiver authority in Section 208.10 to exempt entire classes of Federal payment transactions.

3. The NPRM also contains no mention of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The preamble to the final rule will need to include text similar to that reproduced below:

**XXXX. SUBMISSION TO CONGRESS AND THE
GENERAL ACCOUNTING OFFICE**

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is [is not] a "major rule" as defined by section 804(2) of the APA as amended.

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D. Section 208.2--Definitions

The definition of "authorized payment agent" could benefit from a modification which would make it clear that Treasury is not referring to assignees who are entitled to receive vendor payments. I recommend adding the following sentence to the definition: "The term does not include a bank, trust company, or financing institution designated, under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), to receive a vendor's payments for performance of a Government contract." The institutions that are eligible to be Government contractor assignees are also eligible, under the NPRM, to be the "financial institutions" with recipient accounts where EFT payments may be deposited. The final rule should make clear that in its capacity as a contractor's assignee, the financial institution must comply with the recipient responsibilities of section 208.8(a).

D Section 208.4--Waivers

1. Agency determination of qualification for waivers. This Section states that Treasury is contemplating letting agency officials determine if a payment falls within one of the waiver categories. This puts the record keeping requirement for waivers on the Agency. However, if the agency is found to be in noncompliance, Treasury has the right to assess a charge equal to the amount determined by the Secretary to be the cost for such noncompliance.

Since the Proposed Rule does not anticipate agencies will evaluate the individual's circumstances and that a waiver from payment by EFT will be automatic and based solely on the individual's certification, **Section 208.9-Compliance** should reflect a provision that states, "If the agency has adequately documented their waivers through the stated self-certification process, they will be deemed to be in compliance with the EFT mandate."

2. Waiver for vendor payments where remittance data are not available to the vendor. Because vendors require remittance information to reconcile receipt of funds with payment data and because some financial institutions do not transmit such information to vendors, it is recommended that this situation constitute justification for a waiver if the problem has not been resolved by January 1999. We believe that this issue must be addressed vendors are mandated to receive payment via EFT. With this issue unresolved, relationships between the Government and its vendors may be damaged and result in less competition when Agencies seek goods and services.

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G. Section 208.7--Agency Responsibilities

If a vendor certifies that it [s/he] does not have an account at a financial institution, the proposed rule does not make clear how this fact is to be communicated to Treasury so that an Electronic Transfer Account at a Treasury-selected financial institution can be opened for the vendor.